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IN THE

# Supreme Court of the United States

October Term, 1977

No. 77—576

J. Gordon Edwards, Ph.D., Thomas H. Jukes, Ph.D.,
Robert White-Stevens, Ph.D.,

*Petitioners,*

v.

National Audubon Society, Inc.,
Robert S. Arbib, Jr., Elvis J. Stahr, Jr.,

*Defendants,*

and

The New York Times Company, Roland C. Clement,

*Respondents.*

## ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## REPLY BRIEF FOR PETITIONERS

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## REPLY BRIEF FOR PETITIONERS

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### STATEMENT

In their Petition for Writ of Certiorari filed in this Court on October 18, 1977, petitioners urged, *inter alia*, that the decision of the United States Court of Appeals for the Second Circuit, 556 F.2d 113 (1977), has sought to establish an unprecedented doctrine of privilege in the law of libel involving public figure

plaintiffs. This is the doctrine of "neutral reportage," which is unsupported by *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), and later cases decided by this Court. Further, petitioners urged that the Court of Appeals decision is manifestly incorrect with respect to the evidence of record upon which the jury verdict of actual malice was based and sustained by the District Court in its denial of respondents' motions for judgment notwithstanding the verdict.

The briefs which respondents have filed in opposition rely substantially upon cases whose rules of law they misconstrue in their effort to support the decision of the Court of Appeals and to suggest that this case does not warrant review by this Court. Petitioners submit this reply to the briefs of respondents in order that this Court may affirm its commitment to the principles of *New York Times* v. *Sullivan*, which principles have been extensively modified by the Court of Appeals.

## ARGUMENT

### I.

### RESPONDENT TIMES' ASSERTION THAT THE "ACCURATE" REPORTING OF CHARGES AGAINST PUBLIC FIGURES MADE BY "RELIABLE" SOURCES IS ENTITLED TO SPECIAL FIRST AMENDMENT PROTECTION MISCONCEIVES THE RULINGS OF *NEW YORK TIMES V. SULLIVAN* AND LATER CASES RELIED UPON BY THE TIMES, AND, MOREOVER, SUCH ASSERTION IS NOT JUSTIFIABLE IN LIGHT OF THE FACTS OF THIS CASE.

In framing the question presented for review (T, p. 2), * the Times must now bear the burden of the Court of Appeals' novel

*Citations indicating page numbers refer to page numbers in the briefs of respondents Times (T, p..) and Clement (C, p..) in opposition to the Petition for Writ of Certiorari.



pronouncement that the "accurate" reporting of charges against public figures warrants constitutional immunity from liability for libel. However, in so doing, it is equally clear that the Times must assert as an undisputed fact what has been, and remains, among others, a factual controversy central to this litigation—whether Arbib (of Audubon) warned Devlin (of the Times) that the Audubon Foreword did not specifically accuse plaintiffs of being 'paid liars.' This must have created serious doubts in Devlin's mind as to the truth or falsity of the Times article of August 14, 1972, according to the verdict of the jury. Contrary to the Times' assertion that Audubon did make these charges as to petitioners (T, p.3), the record is replete with testimony from Arbib that Devlin was cautioned that no such specific character attacks were ever made or intended by the Foreword to *American Birds*, both by express warning, by Arbib's extreme reluctance to provide Devlin with any names, and by the denials of two of the three petitioners herein. From this testimony flows the inevitable conclusion that the Foreword in itself was not a newsworthy document but rather, that Devlin, realizing an opportunity to sensationalize an otherwise neutral statement, sought to and did create a newsworthy story to titillate the public by dramatizing as a fact (that petitioners were paid liars) an accusation that even the orignal source has denied. The Times concedes that this factual controversy exists (T, pp. 4, 5, 6, 7) and then proceeds to argue that a finding of accurate reporting has, in other cases, "led a number of courts to afford. . . special First Amendment protection" (T, p. 11).

In similar fashion, the Times adopts in its brief in opposition to the Petition for Writ of Certiorari, the Court of Appeals' alternative holding that the evidence of record failed to demonstrate 'actual malice' on the part of the Times (T, p. 13; Petitioners' Appendix, p. 15A). In so doing, the Times either misreads or misrepresents petitioners' position by the Times' assertion that the Court of Appeals' finding is *unrefuted* that the preliminary information and data forwarded to Devlin by petitioners concerning the interpretation of Audubon's published statistical bird count data is "completely irrelevant" to the merits of the Audubon charges. (T, p. 14).

Indeed, this assertion of the Times of the Court of Appeals For the Second Circuit finding is refuted by the evidence itself.[1] Exhibit Number 6 is an article authored by Philip H. Marvin which states that, upon the basis of Audubon bird count data, avian populations increased dramatically despite the advent of pesticides. Exhibit Number 14 contains, among other things, an article written by Dr. Jukes in which is found the Audubon Christmas Bird Count Data Table 1. Both exhibits were unchallenged by defendants.

After Devlin's telephone conversations with Drs. Jukes and White-Stevens, well prior to publication of the Times' August 14th article, both scientists included in their mailings to Devlin Audubon's own published tabulations of bird counts which demonstrated clearly that between the years 1941 and 1960 many of the bird species counted by Audubon observers had experienced marked population increases when counted on a per observer basis. Confronted by the startling clarity of these documents (which were based on Audubon's own data), it is inconceivable to argue that Devlin acted with other than reckless disregard for the truth of Audubon's 'paid liar' accusation in preparing the libelous article for publication. Likewise, the Court of Appeals' utter disregard for this uncontroverted and most pertinent evidence underscores petitioners' assertion in Part III of their main brief that the review of the record by the Court of Appeals was manifestly erroneous.

A close examination of the cases cited by the Times as authority for the newly-forged "neutral reportage" doctrine discloses that the Times' reliance on these cases is wholly misplaced. The Times correctly points out the holding of this Court in *Time, Inc.* v. *Pape*, 401 U.S. 279 (1971) (T. p. 10), but fails to note that the only question before the Court was whether the *Sullivan* "actual malice" test had been correctly applied to the facts of the case. 401 U.S. at 284. Thus, to argue that the Court of Appeals holding in this case is based upon the ruling of *Pape* (T. p. 10) is to misread both opinions and to accord misleading significance to dicta in *Pape*, 401 U.S. at 285-86, by confusing such dicta with the *ratio decidendi* therein.

[1]Petitioners have sustained throughout vigorous objections to the Court of Appeals' mischaracterization as "irrelevant" the exhibits appearing in Appendices A and B of this brief.



The same can be said of the Times' citation of *Medina* v. *Time, Inc.*, 439 F. 2d 1129 (1st Cir. 1971) as support for the ruling of the Court of Appeals in the instant case. The one essential distinction between *Medina* and this case, which the Times fails to make, is that *Medina* involved a situation in which a story carried charges made by a party about a specifically named individual, whereas in the case now before this Court, the original charges were directed against nobody in particular and these charges would have remained harmless and inert had not Devlin provided targets for the aimless barbs of the Audubon publication. The Court in *Medina* pointedly stated that "the plaintiff does not claim the Times article 'truncated or distorted' the statements it reported," 439 F.2d at 1130, whereas it is self—evident, and amply illustrated in our Petition to this Court, that petitioners took issue from the beginning with Devlin's transformation of the Audubon Foreword from a generalized condemnation of what Audubon considered a misinterpretation of its Christmas Bird Count Data into an *ad hominem* assault on petitioners.

Petitioners find the Times' brief recitation of *Vandenburg* v. *Newsweek, Inc.*, 507 F.2d 1024 (5th Cir. 1975) and three District Court cases as authority for the holding of the Court of Appeals similarly unavailing. The question in *Vandenburg, supra,* at 1027, was "whether [there was] reason to think [the sources of the story] false, reason to question the reliability of (the) sources or to investigate further given all the circumstances," and the court answered in the negative, because independent corroboration of these sources permitted the finding that the story reported was not inherently improbable. *Id.* Ironically, *Vandenburg* does shed light on this case by discussing the duty to investigate the sources of allegedly libelous information:

> "When the story is not *'hot news'*, as is the case here, the investigation must be more thorough, and 'actual malice may be inferred when the investigation

> . . . was grossly inadequate in the circumstances.' Vandenburg v. Newsweek, Inc., supra, 441 F.2d at 380." *Id.* at 1026 (Emphasis added)[2]

The Times also cites *Thuma* v. *Hearst*, 340 F. Supp. 867 (D. Md. 1972) for the proposition that the First Amendment protects a publisher who reports accusations made by a reliable source against a public figure, notwithstanding the falsity of the accusations (T, p. 12). In passing, the District Court noted, *supra*, at 870, that it "appears undisputed that Irwin and therefore Hearst, accurately and truthfully reported what had been said by the family, friends and neighbors. . . when they were interviewed by Irwin." However, it is unmistakably clear that *Hearst* did not enlarge the scope of the publisher's privilege in public figure-libel cases because the court granted summary judgment to the defendant on *Sullivan* grounds, in stating that the deposition testimony of the reporter "does not indicate that. . . at the time of publication [he] *seriously doubted* the accuracy of the opinions of the family, friends and neighbors. . . that the shooting was unjustified." *Id.* at 871 (emphasis added). One need only refer to this Court's holding in *St. Amant* v. *Thompson*, 390 U.S. 727,

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[2]Petitioners also take issue with the Times' statement in its brief that "at the heart of the allegation of reckless disregard made in the Petition for Certiorari is the notion that. . . the Times should not have printed the story without more investigation and/or verification. But the law simply does not permit reckless disregard to be so divined." (T, p. 13). The implication of the Times' statement that investigatory failures may not form part of the evidence of reckless disregard is erroneous. Whether such failure will be treated as part of the proof of reckless disregard depends on a number of considerations. See, e.g., *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 157 (1967) (whether story is "hot news"); *Blanke v. Time, Inc.*, 308 F. Supp. 378, 380 (E.D. La. 1970) (whether the necessity to publish was urgent); *Gordon v. Random House, Inc.*, 486 F. 2d 1356, 1363 (3d Cir. 1973), *vacated o.o.g.*, 419 U.S. 812 (1974) (whether "hot news" factor is absent and where defendant is on notice that statements are improbable); *Buckley v. Esquire, Inc.*, 344 F. Supp. 1133, 1135 (S.D.N.Y. 1972) (when plaintiff protested the untruth of an article).



731 (1968) to realize that *Hearst* cannot be taken to support the Court of Appeals decision in the instant case.

Petitioners urge that their Petition and the substance of their claims against the *Times* are not based upon a failure to investigate by the reporter. Rather, this case is one where an investigation was made, and the fruits thereof emphatically disproved the truth of the libelous assertion (that Petitioners were paid liars), which assertion has also been denied by the alleged originator thereof.

Devlin's investigation disclosed three troublesome matters:

> 1.) That Arbib (of Audubon) warned Devlin not to employ the epithet "liar."
>
> 2.) That three of the accused individuals emphatically denied the charges, one of whom admonished Devlin about the potential libel involved.
>
> 3.) That the tabulations of Audubon Bird Count Data indisputably supported Petitioners' positions in respect thereto.

*Novel* v. *Garrison*, 338 F. Supp. 977 (N.D. Ill. 1971), also cited by the Times (T, p. 12), held that a publisher cannot be held accountable for actual malice in printing the actual statements of an important elected official when these statements had been made in an interview with that official, and the official approved the entire article in galley proof form prior to its publication. *Id.* at 982-83. Thus, *Garrison* correctly points out that when a publisher has made a reasonable effort to verify the truth of what he intends to print, and the original source collaborates in the final publication, the 'actual malice' test (in the sense of reckless disregard) is not satisfied. No such reasonable efforts to substantiate the truth of the 'paid liar' epithet can be attributed to Devlin, considering the circumstance of repeated indications of falsehood; nor can it be asserted that Arbib ever approved the Times' August 14th article, either prior to publication or afterwards. Indeed, at trial Arbib stated that he disagreed in form

and substance with Clement's letter to the Times endorsing the article, which was mailed on the day the article appeared in print.

*Oliver* v. *Village Voice, Inc.*, 417 F. Supp. 235 (S.D.N.Y. 1976), also cited by the Times (T, p. 12), stands for an altogether different rule of law than that asserted by the Times. Relying on *Pape*, the court in *Oliver* held that defendant's failure to report the secondary source of the information, which formed the basis of the action for libel, was insufficient evidence of actual malice to withstand a motion for summary judgment:

> "The alleged error is not of the type which by its sheer implausibility should have put the publisher on notice of its falsity, and it is limited to the question of attribution, a shadowy area where the court has stated that the publisher must not be held liable for all the arguable mistakes of his reporters." *Id.* at 239.

If all that was involved in this case was a mere omission on the part of the Times to report Audubon as the source of its article, the disposition of this case might have occurred at an earlier stage of the proceedings. However, Devlin's role as *agent provocateur* in eliciting from Arbib the names of petitioners, and naming Arbib as the source of the accusation that petitioners were paid liars, despite Arbib's warnings to the contrary, creates precisely the inverse of the situations treated in *Pape* and *Oliver*. Indeed, Devlin's attribution of Arbib as the source of the libel in the Times article, after Arbib told Devlin the Foreword was not written with anyone specific in mind, demonstrates an unmistakable disregard for the truth on the part of the Times.

Petitioners submit that the legal authorities offered by the Times in its efforts to offer decisional authority supportive of the Court of Appeals restructuring of the 'actual malice' test of *Sullivan* fall far short of their purported mark, and are in no way grounds for the enlargement of the First Amendment privilege granted to the press by the Court of Appeals For the Second Circuit.



## II.

## RESPONDENT CLEMENT'S ARGUMENT THAT THE EVIDENCE OF RECORD FAILS TO SUSTAIN A FINDING OF ACTUAL MALICE AS TO CLEMENT MERELY BRINGS INTO FOCUS PETITIONERS' CONTENTION THAT THE SELECTIVE APPRAISAL OF THE EVIDENCE BY THE COURT OF APPEALS REQUIRES AN IMPARTIAL REVIEW BY THIS COURT.

Respondent Clement argues, *inter alia*, that petitioners' assertion that Clement supplied petitioners' names to Arbib without a word of caution is "directly contradicted by the record" (C, p. 6). In so arguing, respondent refers to a passage in the Court of Appeals' opinion which found that Clement furnished Arbib with these names with the admonition that nobody was being called a paid liar. What respondent Clement fails to explain, however, is why the Court of Appeals chose to accept Clement's trial testimony, (which had been rejected by the jury and the trial court) and discredit Arbib's testimony to the contrary, when the record is undisputed that Clement was thoroughly familiar with the adversaries on both sides of the DDT controversy, and had aligned himself years ago with the anti-pesticide forces.

Likewise, respondent fails to address Clement's August 14th letter to the Times, which letter candidly conveyed his defamatory intent by approving the manner in which his information had been employed by the Times to malign petitioners. Respondent's only allusion to this self-indicating missive is the Court of Appeals' finding that Clement did not endorse the 'paid liar' accusation (C, p. 6). However, it is significant and telling that respondent Clement similarly omits reference to Part IV of the Court of Appeals opinion which exculpates Clement from liability because, as explicated in the Petition, there is simply no basis for concluding that the use of the word "paid" before "liar" is a prerequisite to defamation liability.

Petitioners submit that these illustrations of the deficiencies in the position of respondent Clement and the arbitrary manner in which the examination of the record was undertaken by the Court of Appeals in concluding that Clement's participation in the events that culminated in this litigation was insufficient to support the jury verdict, provide ample basis for review of the scope and propriety of the appellate function as exercised by the Second Circuit Court of Appeals in reversing the judgment against Clement.

## CONCLUSION

For the foregoing reasons and for the reasons set forth in Petitioners' main brief, Petitioners respectfully urge that the Petition for a Writ of Certiorari be granted.

Respectfully submitted

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# APPENDIX A

# PESTICIDE INFLUENCE ON BIRD POPULATION

Philip H. Marvin

Spring will be strangely silent claims a recent monthly book selection. The songs of birds will be stilled. No longer will we hear the spring peepers. The new growing season will be ushered in the tomb-like quietness. Pesticide chemicals, according to the authoress of this book, are destroying such harbingers of spring along with other wildlife. Robins, she intimates, are on their way to extinction. Increased chemical control of insects, weeds and other pests has produced in large areas springs now unheralded by the return of birds and where the early mornings are strangely silent where once they were filled with the beauty of song birds is the theme of a chapter.

Facts show this to be a misrepresentation. Rather than decreasing, bird populations have increased tremendously during the past decade of greatly increased usage of modern insect and weed control chemicals. The book does give an emotionally convincing story. Cold figures prove the conclusions to be in great error.

Data accumulated by bird watchers and published by the National Audubon Society with the United States Fish and Wildlife Service refute such conclusions. The data show a population explosion among birds while the insecticides and herbicides have reached their greatest use in protecting our crops, foods, forests, city trees, yards and homes.

Bird watchers, the author of this paper being one of them, take an annual census of birds in North America. The counting started in 1899 thru the initiative of the famous naturalist, Dr. Frank M. Chapman, Nearly 9,000 ornithologists now take the annual census. They go in groups or singly to find how many birds of each species they can observe. The counts are made during Christmas week, and are popularly known as the Christmas Bird Counts. Stringent rules make the counts reliable for comparison over the years.

"The Christmas Bird Counts serve as a good inventory of our December birdlife. No other month of the year receives such intense wide-spread coverage.", wrote the world famous ornithologist, Allen D. Cruickshank (Audubon Field Notes 11:(2), 1951). He also described this census as, "The Christmas Bird Count is probably the longest organized cooperative bird watching activity in the entire world." (Audubon Field Notes 12:(2), 1956). These annual records give the most accurate picture of our bird populations.

Data from the Christmas Bird Counts are published in Audubon Field Notes, a periodical sponsored by the National Audubon Society and the U.S. Fish and Wildlife Service. The figures in the table below, taken from this magazine, show a steady growth in bird populations according to the Christmas Bird Counts:

| YEAR | Total Birds Recorded | Number of Observers |
|---|---|---|
| 1940 | 2,000,000 | 2,200 |
| 1945 | 3,136,000 | 2,300 |
| 1950 | 6,469,000 | 4,875 |
| 1951 | 7,507,000 | 5,151 |
| 1952 | 12,158,000 | --- |
| 1953 | (Not summarized in Audubon Field Notes) | |
| 1954 | 17,648,000 | 7,612 |
| 1955 | 24,883,000 | 6,331 |
| 1956 | 18,911,000 | 6,543 |
| 1957 | 35,146,000 | 5,927 |
| 1958 | 33,891,000 | 7,438 |
| 1959 | 32,710,000 | 8,000 |
| 1960 | 52,524,000 | 8,928 |

Many reasons can be given as causing this bird population explosion. It will suffice here to point out that the meteoric rise in the two decades accompanies the great increase usage of pest control chemicals.

Individual bird species, closely associated with the use of pesticides, show corresponding rises in populations according to the data in the Audubon Field Notes. Robins, according to the quiet spring book, have been reduced to the verge of extinction. The reliable data show robin populations increasing almost ten-fold in the last dozen years.



| YEARS | AVERAGE ANNUAL ROBIN COUNTS |
|---|---|
| 1949–52 | 41,214 |
| 1953–56 | 86,386 |
| 1957–60 | 367,733 |

This rise in the number of robins accompanied the increase spraying to protect city trees from attack by insects. Robin populations actually are increasing at a faster rate than starling, as shown by the following:

| YEARS | AVERAGE ANNUAL STARLING COUNT |
|---|---|
| 1949–52 | 717,477 |
| 1953–56 | 1,561,710 |
| 1957–60 | 5,799,820 |

Although the rate of increase is greater for robins, starlings have increased much more in numbers. Both species feed on the grubs, earthworms, beetles and other food in the lawns under the trees sprayed for control of Dutch elm disease, canker worms, elm leaf beatle and other pests.

Many other home yard birds show rises in populations during this period when chemicals have been relied upon increasingly more for insect and weed control, as shown by the following figures, also taken from the Christmas Bird Counts:

| YEARS | AVERAGE ANNUAL COUNTS | | | |
|---|---|---|---|---|
| | Mourning Dove | Flicker | Mockingbird | Cardinal |
| 1949–52 | 13,131 | 4,278 | 4,430 | 19,576 |
| 1953–56 | 32,752 | 5,980 | 9,802 | 31,375 |
| 1957–60 | 59,886 | 7,500 | 14,027 | 43,191 |

(Note: figures for 1953 not included for the first three birds, as such were not summarized in Audubon Field Notes.)

An explanation may be in order as to why these particular yard birds were selected. The mourning dove lives in mid-western cities, making loosely built nests which direct spray streams could knock apart. Yet this species has increased over 4-fold. The flicker, described as the best known woodpecker to urban people,

continues to increase despite the spraying of its environment. The song of the mockingbird, so well publicized by verse, is far from silent, despite imported fire ant control programs in the South. The flashy cardinal, a seed eater and nesting in shrubs, shows an increase, but less so than other species directly associated with the sprayed trees.

Many species of birds associated with agriculture also show tremendous rises in populations in the past 12 years, according to the Audubon Field Notes. Crows have doubled in numbers, from 107,441 to 227,302; despite their close associations to cutworms and other field insects which farmers so frequently need to control with chemicals to stay in the business of producing our food and clothing crops. The killdeer, a bird of chemically treated meadows and other open ground, increased from 6,523 in 1949 to 18,191 in 1959. The redwing blackbird, jumping from 1,399,466 to a whopping 20,049,213, probably is our most common bird. Its gigantic increase coincided with the increase spraying of its marsh habitats for mosquito control.

While the total bird populations have been increasing, local bird numbers may vary for any of a number of reasons. Man may be responsible for some, natural conditions for others. In either case, the changes more likely are shifts in populations. A tree falling in a forest starts a new ecological succession in a localized area. Birds and other animals living in the tree move to new quarters. Sunlight, now penetrating to the forest floor, gives grasses and shrubs the conditions they need for growth. New species of birds, associated with such plants, move in. The same process occurs when fires, started by lightning, wipe out the existing vegetation over large areas and new plants then establish themselves.

The authoress of the silent vernal season book claims that the balance of nature is a fluid, ever shifting condition, in a constant state of adjustment. Man, she points out, is a part of this balance. This is a very agreeable statement. Man-made objects may kill many birds. Over 20,000 birds were reported killed by TV towers in the autumn of 1960 (Audubon Field Notes 15:(1):78) Yet, by putting up bird houses, by maintaining feeding



stations and by keeping bird baths supplied with water, we perpetuate many birds which the rigors of nature would otherwise eliminate.

No one knows what the future population counts of birds will be. The great rise in their numbers opens them up to epidemics of communicable diseases. Since there are so many more birds present, people will be finding the dying and dead ones much more readily, whether the birds die from diseases, accidents or other causes. At times pesticides will be blamed, with justification in some instances. More frequently, pesticides will be incriminated by association without just reason. This has happened in the past. Bluebirds have been on the decline since 1957. The imported fire ant control program in the South was said to be the cause, since so many bluebirds migrated to such areas for the winter. However, as recently reported in Audubon Field Notes ( _____, 1962), decreases showed up in the bluebird populations which never visited the areas of imported fireant eradication. Probably severe winter weather has been responsible, as Forbush noted for bluebirds in the last half of the previous century (*Birds of Massachusetts and Other New England States*, Vol. 3, p. 419).

When bird populations drop or shift, the temptation to accuse insect and weed control activities will be great. Frequently it is the easy way to solve a problem, even if the solution is erroneous. All factors need to be considered by well trained persons to approach the truth. Reliable scientists use as much data and facts as possible in drawing conclusions. *Many others rely on single observations and even on incorrect conclusions of others. Emotional appeal sways the masses, at times to acts of foolishness. It requires strong character to ascertain the facts in order to see reality accurately.*

The booming insect and weed killing chemical business has been well matched by the soaring populations of birds, despite claims to the contrary. Misuse of pesticides occurs occasionally. Misuse of ideas, as noted in this article, has been more flagrant. Both are to be deplored. The poisoned pen can be the more detrimental to man when it initiates unwise action. The public needs facts, not misconceptions, to act with sound judgement.

# APPENDIX B

**Table 1**
Audubon Society Christmas Bird Count Data[a]
1941 (2,331 observers) vs. 1960 (8,928 observers)

| Species | Count | | Count/Observer | | Ratio per Observer |
|---|---|---|---|---|---|
| | 1941 | 1960 | 1941 | 1960 | 1960/1941 |
| Eagle | 197 | 891 | 0.08 | 0.10 | 1.25 |
| Gull | 124,470 | 635,642 | 53.40 | 7.20 | 1.33 |
| Raven | 667 | 2,699 | 0.29 | 0.30 | 1.03 |
| Crow | 185,519 | 250,307 | 79.59 | 28.04 | 0.35 |
| Quail | 2,060 | 10,276 | 0.88 | 1.15 | 1.31 |
| Pheasant | 6,839 | 19,731 | 2.93 | 2.21 | 0.75 |
| Mourning Dove | 7,411 | 72,958 | 3.18 | 8.17 | 2.57 |
| Swallow | 14,347 | 242,303 | 6.15 | 27.14 | 4.41 |
| Grebe | 2,501 | 27,826 | 1.07 | 3.12 | 2.92 |
| Pelican | 4,450 | 10,562 | 1.91 | 1.18 | 0.62 |
| Cormorant | 3,246 | 27,162 | 1.39 | 3.04 | 2.19 |
| Heron | 2,254 | 16,253 | 0.97 | 1.82 | 1.88 |
| Egret | 1,469 | 16,800 | 0.63 | 1.88 | 2.98 |
| Swan | 18,554 | 33,994 | 7.96 | 3.81 | 0.48 |
| Goose | 182,820 | 696,777 | 78.43 | 78.04 | 0.99 |
| Duck | 2,137,093 | 2,739,517 | 916.81 | 306.85 | 0.33 |
| Blackbird | 137,502 | 20,552,375 | 58.99 | 2,302.01 | 39.02 |
| Grackle | 24,937 | 12,570,458 | 10.70 | 1,407.98 | 131.59 |
| Cowbird | 40,019 | 3,286,314 | 17.17 | 368.09 | 21.44 |
| Chickadee | 21,330 | 55,906 | 9.15 | 6.26 | 0.68 |
| Titmouse | 5,038 | 18,268 | 2.16 | 2.05 | 0.95 |
| Nuthatch | 4,214 | 13,439 | 1.81 | 1.51 | 0.83 |
| Robin | 19,616 | 928,639 | 8.41 | 104.01 | 12.37 |
| English sparrow | 53,335 | 358,796 | 22.88 | 40.19 | 1.76 |
| Bluebird | 3,742 | 6,903 | 1.60 | 0.77 | 0.48 |
| Starling | 211,836 | 8,673,095 | 90.88 | 971.45 | 10.69 |

[a]42nd Christmas Bird Count, *Audubon Magazine*, 1942, 61st Christmas Bird Count, *Audubon Field Notes* 15: 1961.